



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Garrison Place Real Estate Investment Trust
9 Regis Drive
Pelham, NH 03078

Re: Town of Nottingham Tax Map 3, Lot 10
Town of Barrington Tax Map 4, Lot 72a

ADMINISTRATIVE ORDER
No. WD 02-31

September 30, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Garrison Place Real Estate Investment Trust pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Garrison Place Real Estate Investment Trust ("Garrison") is a New Hampshire corporation having a mailing address of 9 Regis Drive, Pelham, NH 03078.

C. STATEMENTS OF FACT AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III, provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. RSA 482-A:3, I, reads in part: "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp, in and adjacent to any waters of the state without a permit from the department."
4. Garrison is the owner of two parcels of land, totaling 79.19 acres, located on NH Route 4 in Nottingham and Barrington, New Hampshire and further identified on Town of Nottingham Tax Map 3 as Lot 10, and on Town of Barrington Tax Map 4 as Lot 72a ("the Property").

5. Jurisdictional wetland boundaries on the Property were delineated by NH Soil Consultants, Inc. ("NHSC") on August 11, 1999.
6. On December 13, 2000, DES personnel held a pre-application meeting with Garrison ("Applicant") consultants Lawrence Morse, president of NHSC and Denis M. Hamel of Cammet Engineering. During that meeting, DES personnel explained the permitting criteria and processes and reviewed preliminary plans prepared by NHSC and Cammet Engineering depicting a proposed water bottling plant with supporting infrastructure. The estimated impact to wetlands associated with this plan was approximately 6,000 sq. ft. The Applicant's consultants indicated that the proposed work would occur adjacent to Barrington's designated prime wetlands.
7. On April 2, 2001, DES received an application from Garrison stating that the

proposed project includes the construction of a 180,000 sq. ft. spring water bottling plant (to be constructed in two phases), a +48,125 sq. ft. industrial building with associated infrastructure, parking and vehicle access ... [The proposed project proposed four permanent wetland impacts and one temporary impact area.] The widening of U.S. Route 4, construction of the access road, installation of a water line, and the construction of the bottling plant will impact portions of four wetlands, with total proposed impact of 16,725 square feet. Approximately 4,075 sq. ft. of this impact quantity is existing unpermitted impacts that the applicant is applying to retain after-the-fact. Another 490 sq. ft. of the total proposed wetland impact area is temporary impact for the installation of a water line from USA Well # 4 to the spring water bottling plant. The applicant is also proposing to restore 2,750 sq. ft. of existing unpermitted wetland impacts. A 9.9 acre conservation easement will be place on a portion of an adjacent parcel in the Town of Barrington, specifically identified on Barrington tax maps as Tax map 4, Lot 72A as mitigation for the proposed wetland impacts.
8. On August 20, 2001, DES received a letter dated August 16, 2001 from Garrison agent, NHSC, requesting an amendment to the original application. The letter states that Garrison is amending its application based on comments received from the Nottingham Conservation Commission, the N.H. Department of Transportation ("NHDOT") and observations made during site inspections. Jurisdictional wetland boundaries were revised, additional wetland impacts were identified and additional wetland restoration was proposed. Garrison summarized the wetland impacts as follows: total existing, unpermitted wetland impacts - 11,895 sq. ft.; existing, unpermitted wetland impacts to be restored - 6,490 sq. ft.; existing, unpermitted wetland impacts to be retained - 5,405 sq. ft.; proposed additional, permanent wetland impacts - 13,425 sq.ft.; proposed temporary wetland impacts - 490 sq. ft.
9. On August 24, 2001, DES Wetlands Bureau personnel inspected the Property with DES Water Supply Engineering Bureau personnel, Garrison agents Mssrs. Morse and Hamel, and conservation commissioners from the towns of Nottingham and Barrington. During the inspection, DES personnel identified numerous discrepancies between the on-site conditions and the existing conditions plan included as part of the application. During this inspection, DES personnel hand-delivered a request for more information on the pending application.

10. On September 6, 2001, DES received a letter from the Barrington Conservation Commission ("BCC") dated August 28, 2001 as a follow up to the August 24, 2002 inspection of the Property. The letter pointed out that the road and ditch are adjacent to a prime wetland and the gauge is located in the wetland; these would appear to be violations that require intervention by the Wetlands Bureau. Additionally, the BCC pointed out that the owner of the Property, Francisco Rotondo, has a history of environmental violations in Barrington. Under the name "Golden Ponds Hunting and Fishing Corporation," the owner committed unauthorized wetland impacts in 1993 (DES Wetlands files 1993-1218 and 1993-1863). Francisco Rotondo, the agent for Garrison, is also the named agent for the Golden Ponds Hunting and Fishing Corporation.

11. On October 5, 2001, DES issued a Letter of Deficiency ("LOD") to Garrison. The LOD documented that:

- (a) Approximately 13,000 sq. ft of wetlands were dredged and filled on the Property without a permit;
- (b) Over 100,000 sq. ft. of contiguous area was disturbed on the Property without a site specific permit; and
- (c) Certain areas of the wetland delineation were questioned and supplementary information on the wetlands base map was requested.

12. The LOD requested that Garrison take the following actions:

- (a) Within 30 days, submit a site specific permit application to DES;
- (b) Within 30 days submit a revised restoration plan to DES; and
- (c) Implement the restoration plan after receiving written approval and as conditioned by DES.

13. On November 16, 2001, DES received revised restoration plans from Garrison's agent, NHSC, enclosed with a cover letter dated November 8, 2001. The November 8, 2001 letter states that "there are twelve existing, unpermitted wetland impact areas" on the Property. The letter further stated that:

Approximately 20,796 sq. ft of wetlands were filled and graded as existing woods roads were upgraded and new crossings were made for a logging operation and potential well exploration. A 2,902 (sq. ft.) area within 100 feet of the Town of Barrington's Prime wetland # 40 has been cleared and graded. The applicant is applying to retain portions of four of the existing wetland impacts, totaling 7,335 square feet as part of this DES Wetlands Bureau application. Eleven existing impact areas (denoted as R1-R11 on the Wetland Restoration Plan) constituting 16,353 square feet will be restored according to the revised restoration sequence. If the existing wetland impacts that the applicant is proposing to retain are not approved after-the-fact, a similar restoration sequence and planting scheme for those areas will be submitted to the DES Wetlands Bureau for review and approval.

14. On December 11, 2001, DES issued a Restoration Approval to Garrison for the restoration

of approximately 7,335 square feet of wetlands.

15. On January 14, 2002, DES issued a Revised Restoration Plan Approval to Garrison for the restoration of 16,363 sq. ft. of wetlands to correct a typographical error in the December 11, 2001 approval in which the area of restoration was incorrectly stated as 7,335 square feet. The area of restoration was corrected to 16,363 square feet in the Revised Restoration Plan Approval.

16. On January 29, 2002, the DES received a letter dated January 22, 2002 from the BCC requesting reconsideration for the Revised Restoration Plan Approval and further requesting a public hearing on the matter.

17. On July 3, 2002, DES personnel spoke with Garrison Attorney, Greg Smith and Garrison agent, NHSC, relative to grading, seeding and stabilization of soils adjacent to the prime wetlands. That stabilization work was in fact then authorized by DES personnel so as to prevent erosion and deposition of soils into the prime wetland. The scope of that authorization was limited and full restoration activities were not discussed or authorized at that time.

18. On July 17, 2002, the stabilization work was initiated by Garrison and DES personnel were made aware that, in addition to site stabilization, full restoration of the area was proceeding. After a conference call with the Town of Nottingham counsel, Tupper Kinder, and Assistant Attorney General Richard Head, Garrison counsel Greg Smith and DES Land Resources Manager, Rene Pelletier, it was agreed that the installation of erosion control measures and planting of trees and shrubs which had been delivered to the Property should be completed so as to provide the greatest level of protection possible to the prime wetland. This work was authorized at that time.

19. On July 18, 2002, DES personnel inspected the Property to monitor the progress of the site stabilization. During that inspection DES observed the following:

- (a) The DES Restoration Approval letter was not posted at the Property;
- (b) Sixty five plants were being installed (only 35 had been proposed);
- (c) Organic loam was being spread in the planting area;
- (d) The spring outlet ditch had been filled in;
- (e) Siltation and erosion controls had been installed at the toe of the slope closest to the prime wetland; and
- (f) An area landward of the planting area was unstabilized and exposed.

20. On July 23, 2002, DES personnel inspected the Property with Garrison and the towns of Barrington and Nottingham. During that inspection the following observations were made:

- (a) The plantings at the R11 area were installed but were wilting;
- (b) Loam had been spread to within 100 feet of the prime wetland boundary;
- (c) Additional silt curtain had been added downslope of the prior ditched spring outlet area;
- (d) Hay had been spread over the planting area; and
- (e) The DES Restoration Approval letter had not been posted at the property.

21. During the July 23, 2002 inspection, Garrison agents represented that they would be increasing the overall proposed restoration area and would request to retain only those impact necessary for access to the rear of the Property. At the time, NHSC professionals indicated that revised restoration plans would be coming shortly.

22. On August 21, 2002, DES held a public hearing on reconsideration of the Revised Restoration Approval issued January 14, 2002. DES received additional revised restoration plans, dated August 19, 2002, the afternoon of the hearing.

23. During the public hearing the BCC, the Barrington Town Administrator and many residents of Barrington testified that they would like to see full restoration of the Property because they felt that Garrison "should not be allowed to profit from its initial disregard of the regulations."

24. In a letter dated August 28, 2002, Town of Northwood Selectman James Hadley states that "only full restoration by the applicant should be allowed."

25. The NHSC Revised Restoration Plan, dated August 19, 2002, submitted to DES on August 21, 2002 states that "the majority of the existing wetland impact areas that are not included in Phase I were part of an historic woods/farm road that existed on the property prior to the year 1943, as documented by the enclosed aerial photographs and supported in the field by the configuration of the existing stone walls".

26. Field observations by DES personnel revealed that there was a historic woods road near location E2 measuring approximately 12' x 66' (but the stone wall was moved and realigned through the wetlands) and location E3 measuring approximately 12' x 140' as noted by stone walls shown on NHSC plans dated August 1, 2001. These areas total approximately 2,472 square feet.

27. On September 20, 2002, DES Wetlands Bureau granted the Barrington Conservation Commission's request for reconsideration of the Revised Restoration Approval issued on January 14, 2002.

D. DETERMINATION OF VIOLATIONS

1. Garrison has violated RSA 482-A:3, I, by filling and grading approximately 20,796 sq.ft. of wetlands for road construction without a permit from DES.
2. Garrison has violated RSA 482-A:3, I by clearing and grading approximately 2,902 sq.ft. of area within 100 feet of the Town of Barrington's Prime Wetland # 40 as indicated on the Town of Barrington's Prime Wetland Map without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Garrison as follows:

1. **Immediately** retain a certified wetland scientist to supervise the restoration as required by this Order.

2. **Prior to the commencement of restoration**, conduct an onsite meeting between the contractor and the wetland scientist identified in Paragraph E.1 above to review the restoration as required by this Order, including review of restoration areas, the restoration sequence, the scope of the restoration, and the proper installation of siltation and erosion controls.

3. Siltation and erosion controls shall be installed prior to commencement of the restoration to ensure there is no degradation of restored areas and adjacent resource areas and to prevent any water quality degradation.

4. Remove brush, stumps, logging debris, and fill as shown on NHSC plans dated August 6, 2002 (specified as phase I restoration) **by October 11, 2002**. These areas are specifically described on the NHSC plans as:

- (a) 230 sq.ft. of impacted wetlands identified as R3 (E5);
- (b) 1,960 sq.ft. of impacted wetlands identified as R1 (E7);
- (c) 1,046 sq.ft. of impacted wetlands identified as R5 (E8);
- (d) 398 sq.ft. of impacted wetlands identified as R7 (E9);
- (e) 837 sq.ft. of impacted wetlands identified as R8 (E10).

5. In addition to those areas identified on the NHSC plans dated August 6, 2002 and referenced in E4. above, remove fill placed in the following additional areas **by October 11, 2002**:

- (a) 1,183 sq.ft. of impacted wetlands identified as R10 (E1);
- (b) 4,793 sq.ft. of impacted wetlands identified as R2 (E4);
- (c) 1,100 sq.ft. of impacted wetlands identified as R4 (E6);
- (d) 156 sq.ft. of impacted wetlands identified as E11 (no R designation given)
- (e) At the R11 area, install organic loam and an additional 65 plantings landward and parallel to recently planted areas to the same species diversity and height, distributed throughout the disturbed upland area.

6. For area R9 (E2) as designated on the NHSC plans, remove fill from 2,933 sq.ft. of wetlands in excess of the historic woods road (792 sq.ft. - 12' x 66'). At this location the original stone wall shown on NHSC plans dated August 1, 2001 (received August 20, 2001) are at a different alignment and location than the current impact. The restoration should match the historic condition as depicted by the stone walls shown on the August 1, 2001 plans.

7. For area R6 (E3) as designated on the NHSC plans, dated August 6, 2002, remove fill from the 3,688 sq.ft. area of wetlands in excess of the historic woods road (1,680 sq.ft. - 12' x 140').

8. Fill shall be removed down to the original hydric soil elevation and removed fill shall be placed outside of wetlands jurisdiction.

9. Seed and plant all restoration areas as specified by letter dated August 19, 2002, NHSC Table 1 at Page 5 of 5 and Page 6 of 6 by October 25, 2002. Area E11 shall be stabilized with New England Wetmix @ 1 pound/5,000 S.F.

10. Stabilize all disturbed soils adjacent to wetlands and surface waters, where final grading has

been completed or where work has been suspended, by seeding with an appropriate upland stabilization seed mix by **October 25, 2002**.

11. Mulch restoration areas with clean weed-free straw.
12. Reseed areas that have not been stabilized by the original seed application with the wetland seed within 2 weeks of receipt of this Order.
13. Replace dead woody plant species to maintain a 75% survival rate in the wetland areas and to a 85% survival rate in the upland areas adjacent to the designated prime wetland.
14. Remove the siltation and erosion controls once the restoration areas have been fully stabilized.
15. Wetland and upland restoration areas adjacent to designated prime wetlands shall be monitored by a certified wetland scientist for a period of two years from the completion of the restoration work. Monitoring shall include verification of the presence of hydrology, hydrophytic vegetation and hydric soils, planting survival rate, soil stabilization, wetland function and identification of any invasive species.
16. All restoration work shall be completed by **October 25, 2002**.
17. A monitoring report documenting restoration and planting work shall be submitted to DES **no later than October 28, 2002**. A second monitoring report shall be submitted on May 1, 2002, a third monitoring report shall be submitted on October 28, 2003, and a fourth monitoring report shall be submitted on October 15, 2004. Each monitoring report at a minimum shall include the following:
 - (a) Identification of the "R" and "E" designation area and narrative description of the status of each restoration area;
 - (b) A photograph showing each "E" and "R" area as appropriate;
 - (c) A narrative description on the work accomplished for soil and debris removal, siltation control installation, planting installation and relative stabilization of the soil substrate; and
 - (d) A description of the relative health of the plantings.
18. **The dates specified in this Order supercede those proposed on the NHSC letter dated August 19, 2002.**
19. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton
DES Water Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588

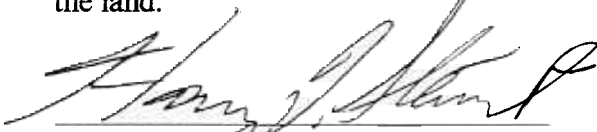
e-mail: mtilton@des.state.nh.us

F. APPEAL

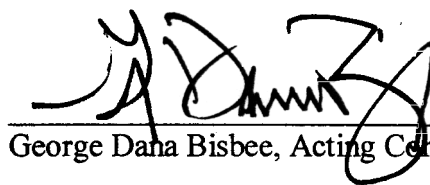
Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Garrison remains obligated to comply with all applicable requirements, in particular restoration of wetlands as required. DES will continue to monitor Garrison's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



George Dana Bisbee, Acting Commissioner

Certified Mail/RRR: 7001 0360 0001 5816 1063

cc: Gretchen Rule, Administrator, DES Legal Unit ✓
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Richard Head, Assist. Attorney General, EPB, NHDOJ
Mark Beliveau, Esquire
John Wallace, Barrington Conservation Commission
Carol Reilly, Barrington Town Administrator
Barrington Selectmen
Senator Caroline McCarley
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